

# SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND RAIDMAX INC.

## 1. RECITALS

### 1.1 The Parties

**1.1.1** This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Raidmax Inc. (“Raidmax”). APS&EE and Raidmax shall hereinafter collectively be referred to as the “Parties”.

**1.1.2** APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

**1.1.3** Raidmax is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

### 1.2 Allegations

**1.2.1** APS&EE alleges that Raidmax sold the Rhino brand of pliers and screwdrivers, including Rhino pliers AS-47 and Rhino screwdriver AS-51 (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to unsafe levels of Di (2-ethylhexyl) Phthalate also known as Bis (2-ethylhexyl) Phthalate (“DEHP”) and lead, without providing “clear and reasonable warnings”, in violation of Proposition 65. DEHP is potentially subject to Proposition 65 warning requirements because it is listed as known to cause cancer and reproductive toxicity, developmental, male. Lead is potentially subject to Proposition 65 warning requirements because it is listed as known to cause cancer and birth defects or other reproductive harm.

**1.2.2** On September 11, 2017, APS&EE provided a Sixty-Day Notice of Violation (“September 11 Notice”), along with a Certificate of Merit, to Raidmax and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. Previously, on February 10, 2017, APS&EE provided a

Sixty-Day Notice of Violation (“February 10 Notice”), along with a Certificate of Merit, to Fry’s Electronics, Inc. (“Fry’s), and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to lead in the Products. On May 3, 2017, APS&EE provided a Supplemental Sixty-Day Notice of Violation (“May 3 Notice”), along with a Certificate of Merit, to Fry’s and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to lead in the Products as well as DEHP in the pliers. The September 11 Notice, the February 10 Notice, and the May 3 Notice shall hereinafter collectively be referred to as the “Notices”.

### **1.3 No Admissions**

Raidmax denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that Raidmax has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Raidmax but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Effective Date**

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

## **2. INJUNCTIVE RELIEF**

As of the Effective Date, for Products manufactured before August 30, 2018, Raidmax shall not distribute, supply, and/or sell the Products in California unless clear

and reasonable Proposition 65 warnings are provided with each unit with the following specific warning with the capitalized and emboldened wording:

**“WARNING:** This product contains chemicals, including lead, known to the State of California to cause cancer and birth defects or other reproductive harm.”

For Products manufactured after August 30, 2018, Raidmax shall comply with 27 *Cal. Code Regs.* § 25601, et seq. (operative Aug. 30, 2018) and may use the following warning with the capitalized and emboldened wording:

**“WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

The warnings for Products manufactured after August 30, 2018 may be used by Raidmax on any Products manufactured before that date.

Each unit shall carry said warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

### **3. PAYMENTS**

#### **3.1 Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Agreement, Raidmax shall pay a total civil penalty of one thousand dollars (\$1,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$250.00) for APS&EE.

Raidmax shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$750.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$250.00.

Raidmax shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

### **3.2 Reimbursement Of APS&EE's Fees And Costs**

Raidmax shall reimburse APS&EE's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement, in the amount of twelve thousand five hundred dollars (\$12,500.00).

Raidmax shall remit the payment in three (3) installments, with each installment by a check or money order made payable to "Law Offices of Lucas T. Novak", to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

The first installment of \$4,250.00 shall be paid within five (5) business days of the Effective Date. The second installment of \$4,250.00 shall be paid within thirty (30) calendar days of the Effective Date. The third installment of \$4,000.00 shall be paid within sixty (60) calendar days of the Effective Date.

## **4. RELEASES**

### **4.1 APS&EE's Release Of Raidmax**

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Raidmax, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees, including Fry's (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's Notices regarding the Products sold and/or offered for sale in California before and up to the Effective Date. Although APS&EE has not filed a complaint against Raidmax in this matter, it previously filed a complaint and has a

pending action against Fry's in Los Angeles Superior Court, Case No. BC665846, and APS&EE agrees to dismiss that action after Raidmax successfully makes all payments as described in this Agreement.

#### **4.2 Raidmax's Release Of APS&EE**

Raidmax, acting in its individual capacity, and on behalf of the Released Parties, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 in this matter.

#### **4.3 Waiver Of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

### **5. SEVERABILITY**

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.



9. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer of APS&EE, LLC

**AGREED TO:**

Date: 09-27-17

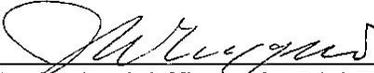
By:   
Authorized Officer of Raidmax Inc.

**9. AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

**AGREED TO:**

Date: September 28, 2017

By:   
Authorized Officer of APS&EE, LLC

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer of Raidmax Inc.